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09/443,158	11/18/1999	JAY S. WALKER	17200-020CT1	6852

  

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EXAMINER	
RIMELL, SAMUEL G	

  

ART UNIT	PAPER NUMBER
2164	

  

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09/27/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

09/443,158

Applicant(s)

WALKER ET AL.

Examiner

Sam Rimell

Art Unit

2164

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 17 July 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 110-131 is/are pending in the application.
- 4a) Of the above claim(s) 98-109, 132-139 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 110-131 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

  
**SAM RIMELL**  
**PRIMARY EXAMINER**

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Preliminary Note: Claims 1-97 have been cancelled. Claims 98-109 have been withdrawn. Claims 110-131 have been elected without traverse. Claims 132-139 have been withdrawn. This office action is non-final.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 110-115 and 117-121 and 123-130 are rejected under 35 U.S.C. 102(e) as being anticipated by Fisher et al. (U.S. Patent 5,835,896).

Claim 110: FIG. 1 illustrates a network of computers, each one of which includes storage devices storing programs and processors to execute those programs.

FIG. 3 illustrates a bidding form (col. 7, lines 41-49). The completed bid form constitutes the conditional purchase offer, since the submission of a bid is a conditional offer to purchase a product, conditional upon agreement of the selling party. As seen in FIG. 3, the bid form includes an offer price (“Bid (price not to exceed)”). The bid form also includes a payment identifier (“Credit Card #”) specifying a financial amount (the inherent credit available on the card; or the bid amount specified by the user: or the amount charged to the card if the bid is successful) and which provides guaranteed payment if the conditional purchase offer is accepted (see text in FIG. 3 “Your credit card number is required to guarantee your bid”).

The purchase offer is compared with seller inventory (steps 83 in FIG. 8) and pricing information (col. 8, lines 56-61 indicate product pricing. The minimum acceptable bid at step 93

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in FIG. 11 is additionally an indicator of pricing ) and determines if the conditional purchase offer is acceptable (step 66 in FIG. 7—the bids are marked as successful or unsuccessful).

If the offer is unacceptable (the bid at step 66 is marked as unacceptable), a rejection of the offer is transmitted to the customer (FIG. 8, steps 84-85—marked bids generate e-mail messages to the consumer indicating the result of the bid).

Action is taken to deter the customer from submitting multiple purchase offers (FIG. 5, step 43, bid validation step can prevent a bid from being submitted. Alternatively, step 53 of closing an auction can deter further bidding on the closed item).

Claim 111: The conditional purchase offer includes an expiration date (FIG. 3, “Expiration date”).

Claim 112: The seller rules are to sell the product to highest acceptable bidder. These rules are enforced by algorithms, such as the algorithm of FIG. 11 which ensures that the highest acceptable bid is selected.

Claim 113: The system of FIG. 1 can be read as a computer reservation system, since a successful bid reserves the product for the user at the bid price. The airline reservation system is optionally recited as thus carries no patentable weight.

Claim 114-115: The financial instrument used for payment is a credit card with an associated credit card account. Strictly speaking, a credit card account is both a debit account and credit account. Charges result in debits from the available line of credit , while payments result in credits towards the available line of credit.

Claim 117: The payment is guaranteed (FIG. 3—“Your credit card is required to guarantee your bid”).

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Claim 118: The conditional purchase offer is authenticated by the bid validator (21).  
Also see steps 41-47 in FIG. 5 for the operation of the bid validator.

Claim 119: The conditional purchase offer includes acceptance of a customer credit card (FIG. 3—"Your card will not be charged unless your bid is successful").

Claim 120: The bid validation process of FIG. 5 can reject (step 44) any particular bid at any particular price. Additionally, the closing of the auction at step (53) in FIG. 6 will prevent all further bids on that item, regardless of price.

Claim 121: In FIG. 5, the steps of opening items for sale (step 52) and closing auctions (step 53) have the effect of limiting bids to the time in which an item is available for auction.

Claim 123: See remarks for claim 110. In FIG. 5, the step of closing an auction (step 53) has the effect of limiting bids to the time in which an item is available for auction and is a deterrence action. This deterrence action can occur after rejecting a bid (step 44) in the bid validation procedure.

Claim 124: See remarks for claim 112.

Claim 125: See remarks for claim 113.

Claim 126: See remarks for claim 114.

Claim 127: See remarks for claim 115.

Claim 128: See remarks for claim 117.

Claim 129: See remarks for claim 118.

Claim 130: See remarks for claim 119.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 116, 122 and 131 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fisher et al. (U.S. Patent 5,835,896) in view of Official Notice.

Claim 116: Examiner takes Official Notice that it is well known in the art to pre-authorize a purchase made on a credit card. For example, this is typically done by hotels which obtain a pre-authorized approval amount from the available credit in the credit card account to cover the cost of a hotel stay. It would have been obvious to one of ordinary skill in the art to modify Fisher et al. to pre-authorize payment amounts before payments are made so as to assure guaranteed payment to the seller as is well known in the art.

Claims 122 and 131: All of the goods and services listed alternatively in claims 122 and 131 are well known in the art. Modifying Fisher so as to include such goods as services for sale would have been obvious to one of ordinary skill in the art as a choice of well known products or services.

Any inquiry concerning this communication should be directed to Sam Rimell at telephone number (571) 272-4084.



Sam Rimell  
Primary Examiner  
Art Unit 2164